



UNITED STATES PATENT AND TRADEMARK OFFICE

18C  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,588	09/18/2000	Jaime Vargas	032405-003	4754

33109 7590 10/23/2002

CARDICA, INC.  
171 JEFFERSON DRIVE  
MENLO PARK, CA 94025

EXAMINER
----------

DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
3731	

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	VARGAS ET AL.
09/664,588	
Examiner D Jacob Davis	Art Unit 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 16 August 2002.  
2a) This action is FINAL.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 38-83 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 38-83 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 18 September 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.  
12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.  
15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18.  
4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 recites the limitation "holder" in lines 5 and 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 38 recites the limitation "an expander" in line 5. Claim 41 recites the limitation "the holder tube and expander" in lines 2 and 3. Claim 53, line 1 recites the limitation "the holder tube and *the* expander". The "expander" of claim 41 requires an article to enhance clarity.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in–
  - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 38, 42, 43, 46-48, 53-62, 64-74, and 76-83 are rejected under 35 U.S.C. 102(e) as being anticipated by Bolduc et al. (US 6,193,734). As illustrated in Figures 10-12, Bolduc discloses an anastomosis system comprising a handle, a holder tube/first member 18B, an expander/second member 16B, a trocar 34B, and a plurality of slits/hooks 40B for receiving pull tabs 38B.

Figures 3-5 illustrate another embodiment of the invention comprising a handle, a holder tube 18, and an expander 16.

Regarding claims 46-48 and 74, Bolduc's anastomosis system inherently must have a handle that is connected to either the expander or the holder tube or both. The handle may be rotated about an axis (though that does not necessarily mean that the handle is a cylinder that rotates relative to another cylinder). As the handle is rotated, it must rotate both the expander and the holder tube.

Claims 60-83 are rejected under 35 U.S.C. 102(e) as being anticipated by Peterson et al. (US 6,152,937). Peterson discloses an anastomosis device deployment system (Figs. 8, 8(a)-13) having a first member 58, a second member 56, and a handle, which is the proximal end of first member 58. Figures 12 and 13 illustrate that as member 58 is retracted proximally, flanges 14 of anastomosis device 10 expand to grasp the graft vessel 30.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 45, 49, 63, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolduc. Regarding claims 45 and 75, Bolduc discloses the system in Figures 3-5 and 10-12 according to claim 38 but is silent regarding the details of the handle. Nevertheless, Figure 16 discloses a handle 88 that would be attached to and move the expander 16,16B relative to the holder tube 18,18B. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inventions of figures 3-5 and 10-12 to include the handle 88 as disclosed in figure 16 so that the expander/first member 16,16B and the holder tube/second member 18,18b can be longitudinally moved relative to one another.

Regarding claim 49, the handle (Figure 16) comprises elements 88, 92, 90 and has a cam groove. The cam groove is the lumen of element 92 through which element 64 passes.

***Allowable Subject Matter***

Claims 39-41, 44, and 50-52 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose or suggest a trocar that receives the anastomosis device (claim 39), an expander having an annular groove (claim 50) and in combination with all of the other limitations. The prior art fails to disclose or suggest "a handle includes two cam grooves, and the holder tube and expander each have a follower member engages in one of the cam grooves to move the holder tube and the expander with respect to one another upon activation of a trigger of the handle," (claim 41) and in combination with the other limitations.

The prior art fails to disclose or suggest the, "holder tube having flexible fingers that flex outward to form a proximal flange" and in combination with all of the other limitations (claim 44).

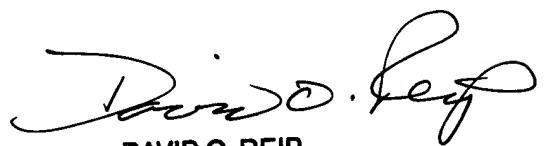
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

Art Unit: 3731

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



DAVID O. REIP  
PRIMARY EXAMINER

DJD

October 21, 2002